Boro Busses Company *and* The Association of Boro Bus Employees. Case 22–CA–17526

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon a charge filed by the Union on February 15, 1991, and an amended charge filed on March 4, 1991, the General Counsel of the National Labor Relations Board issued a complaint on June 27, 1991, against Boro Busses Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On August 5, 1991, the General Counsel filed a Motion for Summary Judgment. On August 9, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days[1] of service, ''all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' After the Respondent failed either to file an answer to the complaint or to request an extension of time to do so, the Regional attorney for Region 22 by letter dated July 15, 1991, and served on the Respondent by certified mail, advised the Respondent of its obligation to file an answer under Section 102.20 of the Board's Rules and Regulations. In his letter, the Regional attorney advised the Respondent that unless an answer was filed by the close of business on July 22, 1991, a Motion for Default Judgment would be filed with the Board. The Respondent neither filed an answer nor requested an extension of time to do so.

As a response to the Notice to Show Cause, the Respondent filed a letter with the Board on August 22, 1991, with an attachment answering the allegations of the complaint. The letter asserts that the answer had been filed with the Regional Director ''on or about'' August 9, 1991. The letter further stated that the delay in filing the answer was due to the Respondent's ''contemplation of going out of business and the sale of its assets.'' The Respondent does not explain, nor is it apparent, why this reason prevented it from either filing a timely answer or requesting an extension of time in which to file an answer.

Since the Respondent has not explained why it failed to file a timely answer or request an extension of time for filing an answer, we find that the Respondent has not shown good cause for failing to file a timely answer[2] Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all time material, the Respondent, a corporation with offices and places of business in Shrewsbury, New Jersey, and Allentown, Pennsylvania, has been engaged in the provision of charter bus service throughout the United States and Canada. During the preceding 12 months, the Respondent, in the course and conduct of its business operations described above, derived gross revenues in excess of $50,000 for the transportation of passengers from the State of New Jersey to points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All motor coach operators and maintenance employees employed at the Employer's Shrewsbury, New Jersey and Allentown, Pennsylvania facilities.

Since about 1965 and at all times material the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit described above. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period July 1, 1990, through June 30, 1991. The Union

[1] The complaint, in citing Sec. 102.20 of the Board's Rules and Regulations, inadvertently misstates the period of time within which the Respondent may file an answer. As set forth below, the Region granted the Respondent an extension of time for filing an answer until 11 days beyond the applicable period of 14 days. Accordingly, we find that this error raises no material issue which, in the circumstances of this case, would warrant a hearing or denial of the Motion for Summary Judgment.

[2] *Calloway & Co.*, 289 NLRB 73 (1988).

continues to be the exclusive representative under Section 9(a) of the Act.

About November 29, 1990, the Union and the Respondent reached full and complete agreement with respect to the terms and conditions of employment of the unit employees to be incorporated in a collective-bargaining agreement between them. Since about December 1, 1990, the Union has requested the Respondent to execute a written contract embodying the above agreement and since that date the Respondent has failed and refused to do so.

Since about January 11, 1991, the Respondent has unilaterally changed the terms set forth in the above collective-bargaining agreement by requiring employees to pay for health insurance coverage for their dependents.

Accordingly, we find that the Respondent, as specified in the Conclusions of Law below, has refused to bargain in good faith with the representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

The Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act by

(a) Failing and refusing to execute a written contract embodying the collective-bargaining agreement reached between the parties, though requested to do so by the Union.

(b) Unilaterally departing from its contractual obligations with respect to health insurance benefits.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed and refused to execute a collective-bargaining agreement agreed on by the parties, we shall order the Respondent to execute the agreement and to make the employees whole, with interest, for any losses they may have suffered as a result of the Respondent's unlawful failure to execute the agreement, with lost earnings and interest to be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987), respectively.

We shall further order the Respondent to restore the health insurance coverage for their unit employees' dependents and to make those employees whole for any losses they may have incurred as a result of the Respondent's unilateral change in their insurance coverage, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Reimbursement shall be with interest as prescribed in *New Horizons*, above.

ORDER

The National Labor Relations Board orders that the Respondent, Boro Busses Company, Shrewsbury, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with The Association of Boro Bus Employees as the exclusive representative of the employees in the appropriate unit by failing and refusing to execute a written contract embodying the collective-bargaining agreement between the Respondent and the Union. The appropriate unit is:

> All motor coach operators and maintenance employees employed at the Employer's Shrewsbury, New Jersey and Allentown, Pennsylvania facilities.

(b) Unilaterally discontinuing health insurance for dependents of its unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union, execute the written contract embodying the collective-bargaining agreement between the Respondent and the Union.

(b) Make the unit employees whole for any loss of earnings or benefits suffered as a result of the Respondent's failure to sign and give effect to the written contract embodying the agreement between the Respondent and the Union, in the manner set forth in the remedy section of this decision.

(c) Make the unit employees whole for any loss of benefits suffered as a result of the Respondent's unilateral discontinuation of health insurance coverage for dependents of unit employees, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments to employees due under the terms of this Order.

(e) Post at its facilities in Shrewsbury, New Jersey, and Allentown, Pennsylvania, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a

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forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with The Association of Boro Bus Employees as the exclusive collective-bargaining representative of the employees in the unit described below, by failing and refusing to execute a written contract embodying our collective-bargaining agreement with the Union. The unit is:

> All motor coach operators and maintenance employees employed by the Employer at its Shrewsbury, New Jersey and Allentown, Pennsylvania facilities.

WE WILL NOT unilaterally discontinue health insurance coverage for dependents of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request by the Union, execute the written contract embodying the collective-bargaining agreement between us and the Union.

WE WILL make each of the unit employees whole, with interest, for any loss of earnings the employees may have suffered by reason of our failure and refusal to execute our collective-bargaining agreement with the Union.

WE WILL make each of the unit employees whole, with interest, for any loss of benefits suffered as a result of our unilaterally discontinuing health insurance coverage for dependents.

BORO BUSSES COMPANY

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''